IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 296 of 1994

Smt.Anjali Balkrishna Waghchoure ..Appellant

V/s

The State of Maharashtra ..Respondent

Shri Kuldeep Patil i/b Deepak Girme for Appellant

Smt. V.R.Bhosale,A.P.P. for State

CORAM:S.S.PARKAR

AND S.R.SATHE,JJ.

DATED:18th October 2004

ORAL JUDGMENT : (Per S.R.Sathe,J.)

1. The Appellant-original accused no.1 in Sessions Case NO.401 of 1992 has preferred this appeal against the judgment and order passed by the Court of Additional Sessions Judge, Pune whereby the accused was convicted for the offence punishable under Section 302 of IPC and was sentenced to suffer imprisonment for life.

2. The brief facts giving rise to this appeal are

as under :-

. Marriage of deceased Sunanda had taken place with Dattatraya on 6-5-1982. After marriage she started residing with her husband. For initial period she was treated well. Out of the said wedlock, they had 3 children. It is the prosecution case that on 6-2-1992 at about 9-00 a.m. to 9-30 a.m. deceased was in her house i.e. room no.8, Ladkatwadi, Pune. At that time accused no.1 Anjali, wife of the brother of deceased's husband was also present in the house. Accused no.1 picked up quarrel on account of incident which had taken place between small boys. Deceased requested her not to quarrel with her. However, accused opened the cover of the stove which was kept in kitchen room, poured kerosene oil on her person, lighted match stick and set her on fire. As a result of the same deceased raised shout and went out of the house. The persons who gathered there on hearing her shout, poured water on her and extinguished the fire. She was immediately taken to Sasoon Hospital, Pune. On reaching Sasoon Hospital, she was removed to ward NO.27 where Dr.Dipali Singh, took history regarding burn injuries sustained by her and at that time she told the doctor that accused no.1 Anjali, poured kerosene on her person and she was set on fire with the help of lighted match stick. Doctor gave immediate treatment, In the meantime the Police

received information that one woman has sustained burn injuries and she has been admitted in the hospital. P.S.I. therefore went to Sasoon Hospital and met the deceased. He enquired with the doctor on duty as to whether injured woman was in a position to give statement. When doctor told him that woman was in a position to give statement, he recorded the statement of deceased Sunanda. On the basis of the said statement offence was registered under Section 498A and 307 of IPC. Police then sent message to Special Judicial Magistrate Magistrate, Rajaram Retwade, who on visiting the Sasoon Hospital recorded the dying declaration of Sunanda. Police visited the place of offence and drew panchanama of place of offence. They also recorded the statements of witnesses. Sunanda succumbed to burn injuries 11 days after the incident. The Police therefore drew the inquest panchanama and sent the dead body was sent for post mortem. After receipt of post mortem notes Police registered the offence under section 302 of IPC. After completion of investigation they submitted the charge sheet against the accused in the Court of Judicial Magistrate, F.C., Pune. During the course of investigation it transpired that deceased Sunanda was subjected to cruelty at the hands of her in laws and as a result of the same, along with accused no.1, father in law, mother in law and sister in law of deceased were also made accused. Finding that accused is charge sheeted for

the offence punishable under Section 302 of IPC, the learned J.M.F.C., Pune committed the case to the Sessions Court, Pune. The Additional Sessions Judge, Pune framed charge Exh.2 against the accused persons for the offences mentioned above.

3. In order to bring home the guilt of the accused, the prosecution examined as many as 7 witnesses consisting of : i) Sou.Nadita S. Kothiya, Exh.11, PW 1, Dr.M.S.Wable, Exh.12, Mr.R.S.Retwade, Spl.Judicial Magistrate,Exh.13, Mr.S.M.Mhamani, Exh.17, Mr.R.T.Chavan, father of deceased, Exh.18, Dr.D.V.Singh, Exh.20, and R.M.Pohekar, Investigating Police Officer, Exh.22, Prosecution also produced the complaint Exh.23, post mortem report exh. 13, panchamama of place of offence Exh.19. From the questions put to the PWs as well as from the statement of accused recorded under Section 313 of Cri.P.C. it appears that the defence of the accused is of total denial. It is tried to be suggested that dying declaration is given at the instance of Tanubai - grand mother of the deceased. After considering the evidence adduced by the prosecution, the learned trial Judge came to the conclusion that there was no sufficient evidence so far as offence under Section 498A of IPC is concerned against any of the accused persons. He also found that there was no evidence against accused nos.2 to 5 for the offence punishable under Section 302 of IPC. He

therefore, acquitted accused nos.2 to 5 from all the offences and relying on dying declaration came to the conclusion that prosecution has proved the offence punishable under Section 302 of IPC against accused no.1, Anjali. He, therefore, passed the order of conviction and sentence as mentioned above.

4. Being aggrieved by the said judgment and order the accused no.1 has filed the present appeal. In this appeal before us Shri Kuldeep Patil holding for Deepak Girme, has urged only two points. Firstly he submitted that there is no sufficient evidence against the accused to hold that the accused has committed an offence punishable under Section 302. Secondly, he canvassed before us that the alleged incident appears to have taken place on spur of moment and due to quarrel which took place between deceased and accused no.1. He therefore submitted that the case falls under Exception 4 of Section 300 of IPC and as such the accused should not be convicted under Section 302 of IPC. As against this the learned A.P.P. supported the judgment and order passed by the trial Judge.

5. It is an admitted fact that since few months prior to the incident deceased was residing at room no.8, Rudhon Apartment, Ladkatwadi, Pune along with her husband. It is also not in dispute that on 6-2-1992 at about 9-00 to 9-30 a.m. deceased had

sustained burn injuries and as a result of the same she was taken to Sasoon Hospital, and there she succumbed due to injuries 11 days after the incident. If we see the post mortem notes it is seen that deceased had sustained extensive burn injuries and death was caused due to shock due to burn injuries. So the question is whether the death of Sunanda was suicidal, accidental or homicidal. At the outset it must be mentioned that it is no where suggested by the defence that death of Sunanda was suicidal or accidental. From nature of injuries mentioned and in particular the dying declaration of Sunanda, it does appear that death is homicidal.

6. The main and material question is whether the said death was caused as a result of acts committed by the accused. For this purpose, the prosecution is relying on the evidence of PW 1 Nadira S.Kotiya Exh.11, S.M.Mhamani, Exh.17, Dr. D.V.Singh, Exh.10 and Special Judicial Magistrate R.S.Retwade Exh.14. PW1 Nadira Kothiha has clearly stated that on that day at about 9-30 a.m. she heard the noise and she saw deceased Sunanda coming out of her house and she had sustained burn injuries. She has categorically stated that at that time Sunanda was saying that her sister in law Anjali poured kerosene on her person and she was set on fire with lighted match stick. It appears that witness Nadira Kothiya is residing very near from the place of offence. So she appears

to be a natural witness. Her testimony is not at all shaken or shattered in the cross examination. So we find that this is first oral dying declaration made by deceased Sunanda and there is no reason to disbelieve the same.

7. The prosecution has also examined witness S.M. Mhamani, Exh.17. She has stated in her examination in chief that at the relevant time she had seen Sunanda having sustained burn injuries and at that time Sunanda was saying that her sister in law Anjali poured kerosene and set her on fire. However, surprisingly the said witness has stated in the cross examination that on that day at the relevant time she personally did not hear Sunanda saying that her sister in law set her on fire. So her evidence is of no use to the prosecution. However, even if her evidence is discarded that would not change the fate of the case. It is pertinent to note that even PW 5 R.T.Chavan, father of the deceased has also turned hostile. He has stated that when he made query with Sunanda, Sunanda told him that Tanubai had asked her to give a statement against Anjali and as a result of the same she made such statement before the Special Judicial Magistrate. Firstly it must be noted that nobody has stated that at the relevant time Tanubai was actually present at the place of incident. Nor there is any evidence on record to suggest that

Tanubai had in fact an opportunity to meet Sunanda prior to the time the Special Judicial Magistrate arrived at Sasoon Hospital. Thus, we find that it is only because the children of deceased are presently residing in the house of the accused, father of deceased had tried to favour the accused. While considering this aspect it has to be noted that alleged incident had taken place at about 9-30 a.m. and Sunanda was removed to hospital immediately after the incident. Dr. D.V.Singh has recorded history at 10-30 a.m. In this history also Sunanda has given the same story. So, this will also indicate that there was absolutely no sufficient time for anyone to tutor Sunanda. Under such circumstances merely because in cross examination witness R.T.Chavan, has said that when he made enquiry with Sunanda she told him that Tanubai had asked her to give a particular statement the same cannot be accepted.

8. P.W.6 Dr.D.V.Singh Exh.20 has examined Sunanda immediately on her admission to Sasoon hospital. She has stated that at the relevant time the patient was in a position to give history and accordingly she has recorded the history. Due weightage shall have to be given to this history recorded by doctor. It is true that it appears that she has rather taken down the history in detail as if it is a dying declaration. But merely because of this fact we

cannot discard or disbelieve her testimony, particularly when it appears that same is otherwise not shaken or shattered or inconsistent with evidence on record. On the contrary it must be noted that Dr.D.V.singh is an independent witness. She examined deceased Sunanda soon after the incident and has recorded the version given by Sunanda. We find that prosecution has also examined witness R.S.Retwade, Special Judicial Magistrate. He has stated that on the day of incident when he received requisition, he went to Sasoon Hospital and after disclosing his identity and verifying that injured Sunanda was conscious and in a position to give statement he recorded her statement as per her say and obtained her signature. If we see the said dying declaration which is at Exh.15 we find that there in also Sunanda has clearly stated that on the day of incident her sister in law Anjali poured kerosene on her person and she was set her on fire. Merely because the said dying declaration is short or cryptic, we cannot raise any doubt about the same. It seems that all material facts have been deposed by Sunanda. there is no reason to disbelieve the evidence of Special Judicial Magistrate Shankar Retwade.

9. Thus we find that evidence of Sou Nadira S. Kothiya Exh.11, Dr.D.V.Singh Exh.20 and Special Judicial Magistrate R.S.Retwade Exh.14, is quite

cogent, consistent and convincing. From their evidence it appears that deceased Sunanda had given the statement on her own i.e. it was given voluntarily and has given true state of affair. It must also be noted that Sunanda survived for about 11 days. If really the incident narrated by Sunanda would not have happened then normally the concerned persons would have requested the Magistrate to record second dying declaration. But that has also not happened. So, once it is held that dying declaration oral as well as written made by deceased Sunanda was true and voluntary and there is no other infirmity as a result of which suspicion can be raised about such dying declaration, the same has to be accepted and must be acted upon. Great importance and weightage has to be given of such dying declaration which is made practically immediately after the incident. Thus, it appears that the learned trial Judge has rightly appreciated the evidence on record and has correctly held that accused is guilty of offence punishable under Section 302 of IPC.

10. The learned Advocate for the accused tried to argue before us that offence in question will not fall under Section 302 of IPC but it will fall under Exception 4 of Section 300. It would be worthwhile to see what Exception 4 says. It reads as follows:-

> Exception 4- Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

11. It is true that in the instant case even from dying declaration it appears that some quarrel may have taken place to but if we minutely read the dying declaration and evidence on record it appears that at the relevant time deceased was in fact not keeping good health and accused had picked up quarrel on account of some incident which had taken place between the boys. Deceased was therefore requesting the accused no.1 that she should not quarrel with her. So this is not a case where there was any provocation from the deceased so as to induce the accused to commit any such act. What is more to be noted is that in order to bring the case under Exception 4 of Section 300, it must be shown that certain quarrel had taken place and the offender had not taken undue advantage or acted in a curel or unusual manner. It is needless to say that the conduct of the present accused namely pouring kerosene on the person of Sunanda and setting her on

fire with lighted match stick was very cruel and definitely unusual. So, under such circumstances by no stretch of imagination it can be said that present case falls under Exception 4 to Sec.300 of I.P.C. So, we think that there is no substance in the argument advanced by the learned Advocate for the appellant.

12. In this view of the matter, we are of the view that the learned Additional Sessions Judge, Pune has rightly convicted and sentenced the accused in Sessions Case No.401 of 1992. Hence the appeal is dismissed.

. At this stage, the learned Advocate for the Appellant -accused submitted that some time may be granted to Appellant-accused to surrender.

. Hence two weeks' time is granted to accused to surrender her bail.

(S.S.PARKAR,J.)

(S.R.SATHE,J.)

. At this stage, the learned Advocate for the Appellant -accused submitted that considering the fact that there are 3 minor children, some time may be granted to Appellant-accused to surrender.

. Hence two weeks’ time is granted to accused to surrender her bail.

(S.S.PARKAR,J)

(S.R.SATHE, J)